

NOVA SCOTIA COURT OF APPEAL
Citation: *Dutkewych v. Riske*, 2007 NSCA 8

Date: 20070125
Docket: CA 270296
Registry: Halifax

Between:

Andreas Myroslav Dutkewych

Appellant

v.

Patricia Riske

Respondent

Judge: The Honourable Justice Nancy Bateman

Appeal Heard: January 25, 2007

Written Reasons: January 26, 2007

Subject: Setting aside a default judgment

Summary: Parties' settlement agreement on separation incorporated into California divorce judgment in 2000. Former wife sued former husband in Nova Scotia alleging default under the provisions of the agreement. Default judgment entered quantifying monetary effect of alleged default. Proposed defence was that former husband had partially satisfied terms of settlement agreement. The Chambers judge was satisfied applicant had a reasonable excuse for failing to defend on time but dismissed the application, citing **Beals v. Saldanha**, [2003] 3 S.C.R. 416, on the basis that the applicant did not have a fairly arguable defence in view of the "foreign judgment".

Issue: Did the judge err in concluding the former husband did not have a fairly arguable defence to the action?

Result: Appeal allowed with costs. The question of whether, or to what extent, the former husband is in default of the terms of the separation agreement is a serious issue to be tried.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 3 pages.